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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,188	01/05/2005	Werner Mannschedel	930008-2184	3722
26304	7590	05/18/2007		
KATTEN MUCHIN ROSENMAN LLP			EXAMINER	
575 MADISON AVENUE			WILSON, JOHN J	
NEW YORK, NY 10022-2585			ART UNIT	PAPER NUMBER
			3732	
			MAIL DATE	DELIVERY MODE
			05/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/505,188

Applicant(s)

MANNSCHEDEL ET AL.

Examiner

John J. Wilson

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5, 8, 9, 11, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Kauschke et al (6610390). Kauschke sows a flexible elastic melt resin material, column 1, lines 19-25, and a thermoplastic material, column 10, lines 11-13, a structured surface as shown in Fig. 1 having a plurality of depressions 22 having an extent of .3-1.0 mm which is within the claimed range, and teaches a center-to-center separation of about double the diameter or about .6-2.0 mm. This center-to-center distance is converted to an edge-to-edge spacing by subtracting off one diameter or .6 minus .3 and 2.0 minus .3 for a spacing range of .3-1.7 mm which is within the claimed range. All of the actual claimed structure being shown, the intended use as a rubber dam is not given any patentable weight.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erikson et al (5499917) in view of Kauschke et al (6610390). Erikson shows an elastic material made from a thermoplastic, column 3, line 42, having surface structure, column 3, lines 15-18, which inherently comprise depressions. Erikson does not state the dimensions of the depressions. Kauschke teaches an elastic melt resin material having bonding points 22 that form depressions, Fig. 2A, and teaches a diameter in the range of .3-1.0 mm and a separation of about double this, .6-2.0 mm, column 4, lines 37-40. It would be obvious to one of ordinary skill in the art to modify Erikson to include depressions sized and spaced as the ranges taught by Kauschke in order to obtain the desired properties. Kauschke also teaches the material can be use for surgical drapes, column 9, lines 60-67. The specific force displacement curve obtained is an obvious matter of choice in the degree of a known parameter to the skilled artisan. As to claim 3, Kauschke also teaches the use of an absorbent material, column 9, lines 12-25. It would be obvious to one of ordinary skill in the art to modify Erikson to include an absorbent material as shown by Kauschke in order to give the material the desired properties. As to claims 4 and 12, the range of depth of the depressions is an obvious matter of choice in the size of a known element to one of ordinary skill in the art in order to obtain the desired properties. As to claims 6 and 13, Kauschke also teaches using different shapes, column 6, lines 20-23. As to claim 10, the range of extent of the depressions is an obvious matter of choice in the size of a known element to one of ordinary skill in the art in order to obtain the desired results. As to claim 15, Erikson

teaches using silicone, column 5, lines 60, and Kauschke also teaches using silicone 142, column 10, line 12.

Response to Arguments

Applicant's arguments filed April 2, 2007 have been fully considered but they are not persuasive. Applicant argues that Erikson does not show depressions sized as claimed, as admitted by the examiner, however, as also suggested by the combination. Applicant argues that Erikson is not a structured surface, however, Erikson teaches puckering which is properly held to be a structured surface. Applicant argues that if holes are punched in Erikson, the sheet will lose elasticity. This is arguing intended use as disclosed, the actual claim language is held to be met. Applicant argues that Kauschke is non-analogous art, however, a rubber dam is held to be a form of a surgical drape as disclosed by Kauschke, and as such, the reference is analogous. Applicant argues that because a circular hole is cut, it is desired to have the same elongation properties in every direction unlike the purpose of Kauschke, however, this again is arguing the intended use with a hole that is to be cut and a property not specifically claimed. The actual claimed structure is properly shown. It is noted that the present invention provides for layers.

Conclusion

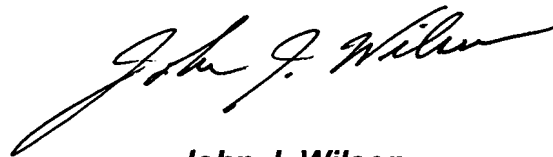
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Wilson whose telephone number is 571-272-4722. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez, can be reached at 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John J. Wilson
Primary Examiner
Art Unit 3732

jjw
May 10, 2007